

ONE HUNDRED TWELFTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

April 21, 2011

The Honorable Lisa Jackson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Administrator Jackson:

I write with regard to the Environmental Protection Agency's (EPA) rulemaking concerning the establishment of federal numeric nutrient criteria for lakes and flowing waters for the state of Florida, promulgated in significant part to protect public health and drinking water supplies. In accordance with a federal consent decree negotiated by the EPA, the EPA finalized statewide numeric nutrient criteria for Florida's lakes and flowing waters in November 2010 and committed to finalize criteria for Florida's canals, coastal waters, and estuaries by August 2012.

There is significant controversy over the basis for the EPA actions, which overrule Florida's own process for setting the relevant standards. In September 2007, the EPA approved Florida's plan for developing numeric nutrient criteria. Florida's plan had a projected completion date of early to mid-2011. In July 2008, a number of environmental advocacy organizations sued the EPA for failure to set its own new water quality standards. In January 2009, the EPA reversed course and rejected Florida's standards, effectively over-riding the state's delegated authority in the matter, and finding that the EPA was somehow better situated to issue criteria for Florida to comply with the Clean Water Act than Florida itself. However, at this point Florida had neither abandoned its effort nor submitted criteria of which EPA had disapproved. In August 2009, the EPA entered into a consent decree with certain environmental advocacy organizations in which the Agency agreed to issue rules establishing numeric nutrient criteria by certain dates.

Since that time, questions have been raised about the pace of the EPA rulemaking, the transparency of its peer review process, and the Agency's cost estimates for complying with the rules. The state of Florida's \$5.7 billion to \$8.4 billion annual cost estimate is 20 to 40 fold higher than the EPA's estimates.

Given the economic and regulatory burdens on Florida, as well as the potential impact on public health and drinking water quality, I seek information regarding the EPA's analyses and

decision-making regarding its numeric nutrient rules. Accordingly, pursuant to Rule X and XI of the U.S. House of Representatives, I respectfully ask that you submit written responses to the following within two weeks of the date of this letter. I also ask that you follow the instructions for responding to the Committee's document requests, included as an attachment to this letter. The relevant time period for the following requests is November 4, 2008, to the present.

1. Provide a detailed chronological description of all EPA actions and decisions relating to the nutrient criteria rulemaking, including, but not limited to, actions and decisions relating to peer review and economic analyses of the proposed and final rules.
2. Explain the basis, including the scientific and technical analyses, for EPA's January 14, 2009, determination that Florida required federal criteria to comply with the Clean Water Act (CWA).
 - a. List the names, titles, offices and specific roles of individuals who participated in the deliberations regarding the determination that Florida required federal criteria to comply with the CWA, including any deliberations conducted during your Administration.
 - b. Provide all documents relating to the January 2009 determination by EPA that Florida required federal criteria to comply with the relevant statutes.
3. Did you, your Assistant Administrator, or designee use your discretion to review the prior Administration's January 2009 determination regarding Florida nutrient standards?
 - a. If not, please explain why not.
 - b. If so, please provide any analyses, reviews, or decision memoranda relating to the determination.
4. Before entering into the settlement agreements relating to the nutrient standards, did EPA perform any analysis of the cost to businesses of complying with the standards that EPA committed to promulgate, including the impact of the standards on U.S. jobs, economic growth and competitiveness in global markets?
 - a. If yes, provide copies of such analyses and all documents related to such analyses. If not, explain why not.
5. When entering settlement agreements of the type relating to the nutrient standards, what is EPA's policy concerning consulting intervenors?
6. What is the basis for EPA's apparent position that Florida local governments and other entities will successfully seek approval of site-specific alternative criteria and variances to meet the standards?
 - a. Has EPA conducted any analyses on its or the state's capacity to grant timely variances or exemptions to the national standards?
 - b. Has EPA evaluated the litigation risks for entities receiving exemptions or variance from the standards?
 - c. Please provide any such analyses.

7. Why are compliance-cost projections for EPA's nutrient standards based on an assumption that widespread exemptions to the standards will be granted?
 - a. What specific provision in the rule states that reverse osmosis treatment will not be required to comply with these standards?
 - b. Provide all documents relating to basing cost estimates on the assumption that entities will first seek "other available means of attaining water quality standards."
8. Explain what advice and analyses you sought or received from scientific review panels with regard to the rulemaking, including any independent assessment by the Science Advisory Board (SAB).
 - a. Provide all documents relating to the peer review process implemented for the numeric nutrient rulemaking, including, but not limited to, documents relating to SAB review and requests for additional scientific peer review

The term "EPA" refers to the Environmental Protection Agency and any of its offices, subdivisions, entities, officials, administrators, employees, attorneys, agents, advisors, consultants, staff, or any other persons acting on behalf or under the control or direction of the EPA. Should you have any questions, you may contact Peter Spencer of the Majority Committee staff at (202) 225-2927.

I appreciate your prompt attention to this request.

Sincerely,



Cliff Stearns
Chairman
Subcommittee on Oversight and Investigations

Attachments

cc: The Honorable Fred Upton, Chairman

The Honorable Henry A. Waxman, Ranking Member

The Honorable Diana DeGette, Ranking Member
Subcommittee on Oversight and Investigations